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April 12, 2004
T.R.A. DOCKET ROOM

Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re Petition for Arbitration of ITC^DeltaCom Communications, Inc with BellSouth
Telecommunications, Inc Pursuant to the Telecommunications Act of 1996
Docket No 03-00119

Dear Chairman Tate

Last Thursday afternoon, shortly before the beginning of the three-day weekend, BellSouth filed a four-page letter, with an attached exhibit, regarding the Authority's pending decision on Issue 26(c) in the above-captioned arbitration

As expected, BellSouth again asks the Authority to postpone a decision on this issue. ITC^DeltaCom has previously stated why the Authority should go ahead and finally resolve this last remaining issue in the arbitration ITC^DeltaCom will not repeat those arguments here Although ITC^DeltaCom does not agree with BellSouth's request for more time, there is nothing improper, or unanticipated, about BellSouth's last minute motion for another delay

ITC^DeltaCom does, however, strongly object to BellSouth using its request for a delay as a vehicle to argue the merits of the parties' Final Best Offers regarding Issue 26(c) The Authority's FBO procedures require that each party has one--and only one--opportunity to present and justify its final offer There is no opportunity provided to respond to the other party's offer. Nevertheless, BellSouth's letter, beginning with the second paragraph on page 1 and continuing until near the end of page 3, criticizes at length the proposal made by ITC^DeltaCom while again reiterating, in a long footnote, BellSouth's argument that the TRA has no jurisdiction over this issue

Those portions of the letter constitute an improper filing and must be struck from the record For the TRA to consider this "evidence" would be a violation of the TRA's directions for submitting Final Best Offers and prejudicial to the rights of ITC^DeltaCom

Even BellSouth must realize that this is an improper filing because the company attempts to justify its conduct with the fig leaf that ITC^DeltaCom's letter of April 6, which requested this matter be placed on the agenda, "also took the opportunity to argue the merits" of ITC^DeltaCom's position on Issue 26(c) Therefore, BellSouth contends that it is entitled to "respond to that argument"

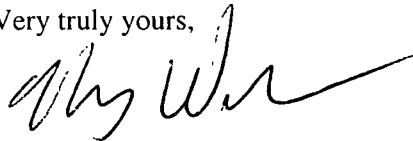
In order for the arbitrators to appreciate the transparent disingenuousness of BellSouth's claim, I have attached a copy of the April 6 letter from ITC^DeltaCom The letter recites the language of Issue 26(c) and then describes, using quotations from the transcript, the arbitrators' prior deliberations on this issue The remainder of the letter explains why ITC^DeltaCom asks the Authority to resolve this issue

Deborah Taylor Tate, Chairman
April 12, 2004
Page 2

There is no argument regarding the merits of either party's Final Best Offer, not even a description of those offers because, obviously, any such argument would not be consistent with the FBO procedures adopted by the arbitrators. BellSouth apparently does not feel similarly constrained.

If the Authority expects to continue to utilize the Final Best Offer procedure, it must force parties to abide by the rules. BellSouth has breached them. ITC^DeltaCom therefore requests that the Authority strike from the record paragraphs two through six of BellSouth's April 8, 2004 letter, including footnotes and the exhibit, and give them no consideration in this proceeding.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Henry Walker', with a long horizontal flourish extending to the right.

Henry Walker

cc: Guy Hicks



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2004 APR -6 PM 1:00

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T.R.A. DOCKET ROOM

April 6, 2004

Hon Deborah Taylor Tate
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee TN 37238

Re *Petition for Arbitration of ITC^DeltaCom Communications, Inc. with
BellSouth Telecommunications, Inc*
Docket No 03-00119

Dear Chairman Tate

ITC^DeltaCom respectfully requests that the TRA proceed to rule on the parties' final best offers relating to issue 26(c) in the above-captioned arbitration.

As framed by the parties, issue 26(c) concerns BellSouth's offering of unbundled switching in situations where BellSouth is not required by Section 251 of the federal Telecommunications Act to make switching available at TELRIC rates (but is required by Section 271 to offer switching at a "just and reasonable rate.")

The issue reads

"Is BellSouth required to provide local switching at market rates where BellSouth is not required to provide local switching as a UNE? If so, what should be the market rate?"

The Authority has already ruled that "BellSouth is to provide local switching at market rates where BellSouth is not required to provide local switching as a UNE." Transcript of TRA Conference of January 12, 2004, at p 16 The Authority, however, has not yet determined a "market rate" The Authority has rejected BellSouth's proposed rate of \$14 "since BellSouth cannot support or justify that rate as just and reasonable as required by FCC rules" *Id.* Similarly, the panel rejected the TELRIC rate proposed by ITC^DeltaCom because "it would not be a rational interpretation of the FCC rules to price non-UNE network elements the same as UNEs." *Id.* The panel then directed the parties to submit final best offers "as to the appropriate interim rate for analog switching when BellSouth is not required to provide such switching as a UNE at TELRIC rates" *Id.*, at 16 The final best offers have been filed and the issue is ripe for decision.

As the Authority is aware, there are many unresolved legal issues concerning the obligations of incumbent carriers to offer unbundled switching pursuant to Section 251 In light

Chairman Tate
April 6, 2004
Page 2

of these uncertainties, all five members of the Federal Communications Commission last week urged carriers to engage in negotiations to resolve these switching related issues.

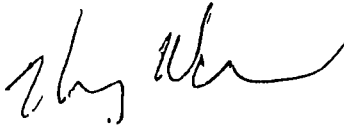
ITC^DeltaCom will consider carefully any proposals from BellSouth concerning the availability and price of switching. It is not clear, however, how long the parties may have to negotiate, the legal status of the Triennial Review Order and the parties' current interconnection agreement, and what interim rules the FCC may adapt if the TRO's findings regarding switching are no longer in effect. These issues may not be resolved for some time. Meanwhile, ITC^DeltaCom must still buy unbundled switching in order to serve its customers and, if those customers are located in the Nashville area, ITC^DeltaCom is still being charged BellSouth's \$14 rate, a price which the Authority has already found to be unreasonable.

Under these circumstances, ITC^DeltaCom needs a prompt resolution of Issue 26 (c). As BellSouth witness Kathy Blake testified in this arbitration proceeding last August, a time when there were also a number of unanswered legal issues, the Authority cannot expect that these matters will be resolved anytime soon but should "render its determination of the issues based on the current statutory and regulatory requirements." Direct Testimony of Kathy Blake, pp. 2-3, emphasis in original. Ms. Blake went on to point out that if there are legal and regulatory changes which occur in the future, "the change of law provisions in the interconnection agreement will allow the interconnection agreement to be revised accordingly." *Id.*, at 3.

After the TRA has made its decision, the parties may, of course, continue to engage in discussions about these issues just as the courts and the FCC may make changes in the current regulatory requirements. As Ms. Blake testified, any such settlements or legal changes can then be incorporated by amendment into the parties' new interconnection agreement.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 
Henry Walker

HW/pp